

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wurtzel	Team: Squad #6	CCRB Case #: 201705158	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 06/23/2017 8:10 PM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 12/23/2018	EO SOL 12/23/2018	
Date/Time CV Reported Sat, 06/24/2017 11:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 06/24/2017 11:53 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Edmundo Rivera	696	955382	052 PCT
2. POM Joel Ayala	08262	954509	052 PCT
3. SGT Charles Cavallaro	4758	938197	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Stephanie Madrid	20358	955110	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
B.POM Joel Ayala	Discourtesy: Police Officer Joel Ayala spoke discourteously to § 87(2)(b)	[REDACTED]
C.POM Joel Ayala	Force: Police Officer Joel Ayala used physical force against § 87(2)(b)	[REDACTED]
D.POM Edmundo Rivera	Force: Police Officer Edmundo Rivera used physical force against § 87(2)(b)	[REDACTED]
E.SGT Charles Cavallaro	Discourtesy: Sergeant Charles Cavallaro spoke discourteously to § 87(2)(b)	[REDACTED]
F.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]

Case Summary

On June 24, 2017, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System on behalf of her husband, § 87(2)(b) and her son, § 87(2)(b)

On June 23, 2017, at approximately 8:10 p.m., at the corner of East 179th Street and University Avenue in the Bronx, Sergeant Charles Cavallaro of the 52nd Precinct stopped § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). Police Officer Joel Ayala of the 52nd Precinct allegedly asked § 87(2)(b) who was seated in the passenger seat, if he was “fucking deaf,” and used profanity at various points throughout the incident (**Allegation B: Discourtesy**, § 87(2)(g)). Police Officer Ayala allegedly punched § 87(2)(b) while removing him from the vehicle (**Allegation C: Force**, § 87(2)(g)). Police Officer Edmundo Rivera allegedly pushed § 87(2)(b) against his vehicle in a forceful manner (**Allegation D: Force**, § 87(2)(g)). Sergeant Cavallaro allegedly referred to § 87(2)(b) as an “asshole” while speaking to § 87(2)(b) (**Allegation E: Discourtesy**, § 87(2)(g)). Sgt. Charles Cavallaro authorized the search of § 87(2)(b)'s vehicle (**Allegation F: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) and § 87(2)(b) were both charged with § 87(2)(b) and released from the stationhouse with Desk Appearance Tickets.

No video was obtained for this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that Sergeant Cavallaro initiated the stop of § 87(2)(b)'s vehicle after observing him drive in a reckless manner. Police Officers Ayala and Rivera both stated that they observed § 87(2)(b) drive above the speed limit and make unsafe lane changes. While § 87(2)(b) denied driving erratically, he did concede that he changed lanes at least one time in an unsafe manner. § 87(2)(b) specified that he may have “cut off” the police vehicle while changing lanes. The investigation further established that § 87(2)(b) was listening to music while driving with headphones in both of his ears.

Article 28, Section 1163 of New York State Vehicle and Traffic Law states that a motorist must signal their intention to change lanes before doing so (**Board Review 01**).

§ 87(2)(g)
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Allegation (B) Discourtesy: Police Officer Joel Ayala spoke discourteously to § 87(2)(b)

It is undisputed that a used marijuana cigarette was in the driver's side door handle of § 87(2)(b)'s vehicle when he was pulled over. It is further undisputed that § 87(2)(b) was verbally and physically uncooperative with officers during this time.

§ 87(2)(b) stated that officers repeatedly asked him if he had any involvement with gangs and he refused to answer the question more than one time. § 87(2)(b) alleged that Police Officer Ayala asked him if he was "fucking deaf."

§ 87(2)(b) alleged that while officers were placing him in handcuffs, Police Officer Ayala called him a "fucking dumbass" and referred to him as "fucking stupid." § 87(2)(b) further alleged that Police Officer Ayala said, "Shut the fuck up" after § 87(2)(b) asserted that he was not resisting arrest.

§ 87(2)(b) who was sitting next to § 87(2)(b) when the first comment was allegedly made and standing at the back of his vehicle when the latter comments were allegedly made did not hear any officer use profanity during this time. Police Officer Ayala denied making any of the above remarks and Sergeant Cavallaro and Police Officer Rivera denied hearing Police Officer Ayala make these remarks.

§ 87(2)(b) was never more than a few feet away from § 87(2)(b) at any point during this incident. Despite maintaining close proximity to his son and to the officers detaining him, § 87(2)(b) did not allege hearing any officer use profanity while speaking with his son. § 87(2)(g)

Allegation (C) Force: Police Officer Joel Ayala used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Edmundo Rivera used physical force against § 87(2)(b)

Police Officer Ayala ordered § 87(2)(b) out of his vehicle multiple times so that he could be placed under arrest in regards to a recently used marijuana cigarette that was observed in the vehicle. § 87(2)(b) stated that Police Officer Ayala pulled him out of his seat and Police Officer Ayala stated that § 87(2)(b) exited on his own volition. Police Officer Ayala attempted to place § 87(2)(b)'s hands behind his back during this time and § 87(2)(b) passively resisted. Police Officer Ayala allegedly punched § 87(2)(b)

multiple times in his ribcage while attempting to pull his arms behind back. § 87(2)(b) did not observe any bruising where he was punched. Police Officer Ayala and Sergeant Cavallaro both stated that no punches were required to overcome § 87(2)(b)'s resistance.

§ 87(2)(b) became aware of a physical confrontation between § 87(2)(b) and officers while he was being detained at the back of his vehicle. § 87(2)(b) motioned to observe the encounter and was forcibly pushed against his vehicle by Police Officer Rivera who placed his arm against § 87(2)(b)'s neck. Police Officer Rivera acknowledged that both he and § 87(2)(b) heard the struggle and motioned to look but denied that he ever needed to physically restrain § 87(2)(b).

Patrol Guide Procedure 221-01 states that officers may use physical force against a civilian “when it is reasonable to place a person in custody,” **(Board Review 02)**.

It is undisputed that both § 87(2)(b) and § 87(2)(b) were considered under arrest at this time relating to the presence of a lit marijuana cigarette inside of their vehicle. § 87(2)(b) admitted that he did not cooperate with Police Officer Ayala as he attempted to place him in handcuffs. § 87(2)(g) § 87(2)(b) admitted to moving his body to observe what was happening with his son while he was detained behind his vehicle. § 87(2)(g)

Allegation (E) Discourtesy: Sergeant Charles Cavallaro spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Cavallaro asked him why his son was acting “like an asshole.” Sgt. Cavallaro denied using any profanity. Police Officers Ayala and Rivera denied hearing this comment. § 87(2)(b) was being detained at this time and he did not allege hearing this comment. § 87(2)(g)

Allegation (F) Abuse of Authority: Sergeant Charles Cavallaro searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that there was a marijuana cigarette in the driver’s side door handle of § 87(2)(b)'s vehicle. It is further undisputed that marijuana had been smoked inside of the vehicle earlier that day. At the time that officers approached § 87(2)(b)'s window, there was an apparent odor of marijuana. This narrative is only contested by § 87(2)(b) who denied that there was an odor of marijuana or any marijuana inside of the vehicle. A subsequent search of the vehicle was conducted by either Police officer Ayala or Police Officer Rivera and one of these officers returned the vehicle to the stationhouse.

A property voucher was prepared by Police Officer Stephanie Madrid of the 52nd Precinct for one marijuana cigarette that was discovered by Police Officer Rivera. The marijuana cigarette is listed as arrest evidence for § 87(2)(b) and § 87(2)(b) **(Board Review 03)**.

The odor of marijuana emanating from a vehicle grants an officer probable cause to conduct a warrantless search of the vehicle. People v. Chestnut, 43 A.D.2d 260 (3rd Dept. 1974) **(Board Review 04)**.

§ 87(2)(b) smoked marijuana in his vehicle prior to being stopped by the police and left the marijuana cigarette in plain view in the vehicle. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) or § 87(2)(b) **(Board Review 05)**.
- Sergeant Cavallaro has been a member of the NYPD for 12 years and has had 20 CCRB cases involving 49 allegations filed against him with seven substantiated allegations.
§ 87(2)(g)
 - In CCRB case number 201607995, Sergeant Cavallaro conducted an improper stop and search of a vehicle and improperly questioned a civilian. Sergeant Cavallaro received three substantiations apiece for the vehicle stop and search and one for the question. No penalty has been listed for this case.
- Police Officer Ayala has been a member of the NYPD for four years and has had eight cases involving 30 allegations and seven substantiated allegations filed against him.
§ 87(2)(g)
 - In CCRB case number 201605007, Police Officer Ayala conducted an improper stop. No penalty has been listed for this case.
 - In CCRB case number 201607995, Police Officer Ayala conducted an improper stop and search of a vehicle and improperly questioned a civilian.
- Police Officer Rivera has been a member of the NYPD for four years and has had nine CCRB cases involving 32 allegations and seven substantiated allegations filed against him.
 - CCRB case number 201605007, Police Officer Rivera conducted an improper stop. No penalty has been listed for this case.
 - In CCRB case number 201607995, Police Officer Rivera conducted an improper stop and search of a vehicle and improperly questioned a civilian. Sergeant Cavallaro received three substantiations apiece for the vehicle stop and search and one for the question. No penalty has been listed for this case.

Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation for this case. A Notice of Claim has not been filed with the Comptroller's Office of the City of New York for this incident (**Board Review 06**). § 87(2)(b)

§ 87(2)(b) does not have a criminal conviction history (**Board Review 07**). § 87(2)(b)

§ 87(2)(b)

Squad No.: 6

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date